

Consequentialism, Climate Change, and the Road Ahead

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1. Introduction

Since the signing of the Framework Convention on Climate Change (FCCC) at the Rio Earth Summit in 1992, abating greenhouse gas (GHG) emissions has been regarded as an urgent global responsibility.¹ GHGs linger in the atmosphere for decades, centuries and even longer. When this is coupled with the fact that their impacts are mediated through various complex systems, the result is that climate change is practically irreversible on time scales that most of us care about.² Abatement matters, however, because the absolute levels of atmospheric concentrations of GHGs as well as the rate of their increase affect the rapidity and extent of climate change, which in turn affect the nature and severity of the impacts. Since abating greenhouse gas emissions imposes costs on emitters, the question of how to allocate these costs fairly has been at the center of climate ethics. Questions about the fairness of various abatement strategies are complicated by the fact that land use changes such as deforestation can also dramatically affect atmospheric concentrations of GHGs, both by directly affecting emissions and by affecting the biosphere's ability to sequester carbon; and, unfortunately, these processes are difficult to characterize and measure.

As it has become increasingly clear that we are in the early stages of a climate change that is likely to continue for centuries, even if we pursue aggressive abatement policies, questions about the fair distribution of the costs of adaptation have also begun to receive attention.³ Since the resources that can be brought to bear on adaptation are limited, questions about setting priorities are also becoming increasingly important.

¹ Abatement is usually called "mitigation" in the climate change literature. In chapter 6 of my forthcoming book, *Reason in a Dark Time: Ethics and Politics in a Greenhouse World*, I argue that 'abatement' is a better term.

² See a pair of recent papers by Susan Solomon and colleagues: "Persistence of Climate Changes Due to a Range of Greenhouse Gases," *PNAS* 2010 (107):18354-18359; and "Irreversible Climate Change Due to Carbon Dioxide Emissions," *PNAS* 2009 (106):1704-1709.

³ See papers by Jamieson and Baer reprinted in Stephen Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (eds.), *Climate Ethics: Essential Readings* (New York: Oxford University Press, 2010); and also W.N. Adger, J. Paavola, S. Huq, and M. Mace, M. J. (eds), *Fairness in Adaptation to Climate Change* (Cambridge MA: The MIT Press 2006. The Intergovernmental Panel on Climate change (IPCC) defines 'adaptation' as "adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities" (M. Parry et. al, *Climate Change 2007: Impacts, Adaptation and Vulnerability* (Cambridge: Cambridge University Press, 2007), p. 27. I have more to say about adaptation in 6.4.

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Adaptation is motivated by a concern to avoid damages. However, climate change damages have already occurred and will continue, though it is difficult to tell exactly what damages can be attributed to climate change and to assess their extent. Research in this area is ongoing, and especially active regarding climate change impacts on human health. The World Health Organization estimates that climate change is already causing more than 150,000 deaths per year. This estimate is controversial, but there is little doubt that climate change will cause millions of deaths, or even orders of magnitude more.⁴ Compensating for loss of life raises special problems, but there is a range of other climate change damages (e.g., property losses) that are straightforwardly compensable. This raises questions about whether compensation should be paid and, if so, who should pay it to whom and how the required compensation should be determined and delivered.⁵

There are also difficult and neglected questions of participatory justice and how it interacts with distributive concerns. Climate change will remake the world in which we live and bequeath to our descendents. Generally, the impacts will be greater on those who contribute little to the problem than on those who contribute a lot. The 42 members of the Alliance of Small Island States (AOSIS) emit about ½ % of global GHG emissions and on a per capita basis emit 1/4th as much carbon dioxide as the global average. Yet many of them will disappear under rising seas.⁶ Sub-Saharan Africans emit about 1/12th as much carbon per capita as Europeans, who in turn emit about ½ as much carbon as North Americans, yet Sub-Saharan Africans will suffer disproportionately from climate change and have less capacity to adapt than Americans or Europeans.⁷ While 194 nations are parties to the FCCC and their diplomats fly around the world in a seemingly endless series of talkathons, most of these nations have very little power over the forces that actually affect the world's climate, and

⁴ See the policy brief available at <http://www.who.int/heli/risks/climate/climatechange/en/>. For a taste of the controversies in this area, visit <http://dotearth.blogs.nytimes.com/2009/05/29/warming-and-death/>.

⁵ For discussion see Catriona McKinnon, *Climate Change and Future Justice* (Routledge, 2011), and Daniel Farber, Basic Compensation for Victims of Climate Change, 155 U. Pa. L. Rev. 1605 (2007). While compensation is discussed in the academic and NGO community, and increasingly by the leaders of some African countries, it is not central to the current diplomatic discourse.

⁶ Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS), *The Impact of Climate Change on the Development Prospects of the Least Developed Countries and Small Island Developing States*, 2009, available on the web at <http://www.un.org/ohrls/>

⁷ [http://earthtrends.wri.org/searchable_db/index.php?step=countries&ccID\[\]=5&theme=3&variable_ID=466&action=select_years](http://earthtrends.wri.org/searchable_db/index.php?step=countries&ccID[]=5&theme=3&variable_ID=466&action=select_years)

billions of their citizens have even less voice.⁸ 80% of global carbon emissions come from only ten countries. Their leaders, along with the executives of the world's most powerful corporations have disproportionate influence on the decisions that affect emissions and the resources available for adaptation.⁹ While this disparity in the ability of various nations and their peoples to effectively participate in climate change negotiations is decried by some academics and NGOs, American academics and policy-makers increasingly seem to want less inclusive regimes.¹⁰

Finally, there are impacts on non-human nature. The 2007 IPCC report documented that climate change has already shifted the geographic ranges of plants, animals, and biomes around the world.¹¹ However, climate change is occurring against a background in which human activities have diminished populations and fragmented landscapes in ways that will reduce dispersal rates and block range shifts for many species, and these human activities show little sign of diminishing. The ability of many species to migrate, even if dispersal corridors are available, will be slow relative to the pace of future climate change. Moreover, since many species engage in mutualistic interactions, the dispersal dynamics of multiple species can affect the viability of any single species.¹² Conservation biologists generally agree that climate change will raise extinction rates.¹³ The polar bear has already become the popular symbol of climate change caused extinction.

Given the depth and difficulty of these moral challenges, it seems reasonable to think that part of why it is difficult to build an effective international climate regime is because of moral disagreements and differing perceptions of justice. Yet many commentators, especially those broadly in the tradition of "realism" in international relations theory, tend to minimize such concerns in favor of such notions as economic

⁸ See Timmons Roberts, and the work of Chuks Okere. To get a feel for what it was like for developing world representatives in Copenhagen in 2009, visit <http://www.iied.org/climate-change/media/climate-game-and-worlds-poor-documentary-film-inside-cop15-climate-change-summi>.

⁹ <http://www.npr.org/templates/story/story.php?storyId=121240453>

¹⁰ There is of course reason to be frustrated by the FCCC process. I discuss FCCC reform in Chapter 6 of *Reason in a Dark Time*.

¹¹ See C. Parmesan and G. Yohe, "A Globally Coherent Fingerprint of Climate Change Impacts Across Natural Systems," *Nature* 421 (2003):37-42; P. Gonzalez, R. P. Neilson, J. M. Lenihan, and R. J. Drapek, "Global Patterns in the Vulnerability of Ecosystems to Vegetation Shifts due to Climate Change," *Global Ecology and Biogeography* 19 (2010):755-768; E.J., Young, C. D. Rosenzweig, M. Karoly, P. Vicarelli, Q. Neofotis, Q. Wu, G. Casassa, A. Menzel, T. L. Root, N. Estrella, B. Seguin, P. Tryjanowski, C. Liu, S. Rawlins, and A. Imeson, "Attributing Physical and Biological Impacts to Anthropogenic Climate Change," *Nature* 453 (2008):353-357.

¹² I. B. Baums, "A Restoration Genetics Guide for Coral Reef Conservation. *Molecular Ecology* 17 (2008): 2796-2811.

¹³ C.D., Thomas, A. Cameron, R. E. Green, M. Bakkenes, L. J. Beaumont, Y. C. Collingham, B. F. N. Erasmus, M. F. de Siqueira, A. Grainger, L. Hannah, L. Hughes, B. Huntley, A. S. van Jaarsveld, G. F. Midgley, L. Miles, M. A. Ortega-Huerta, A. T. Peterson, O. L. Phillips, and S. E. Williams, "Extinction Risk From Climate Change," *Nature* 427 (2004.): 145-148. As a consequence, responses such as "assisted migration" are increasingly under discussion; see MY PAPER ON ASSISTED MIGRATION

efficiency or self-interest. In the next section I fill in some of the details regarding the evolution of the climate change regime that I believe are relevant to understanding its current status. Next I discuss Posner's and Weisbach's "international paretianism (IP)," a condition that they seem to believe effectively limits the influence of moral ideals in international affairs. I then go on to discuss the foundations of Posner's and Weisbach's views regarding climate justice, arguing that only an extreme and reductive version of utilitarianism would lead to some of the views that they embrace. Finally I return to the climate regime, and make some observations about the road ahead.

2. The Dream of Rio

On December 6th, 1988 the UN General Assembly passed Resolution 43/53 on the "Conservation of climate as part of the common heritage of mankind." This resolution formally recognized the IPCC, set a timeline for its first report, and provided a framework for moving to a convention.¹⁴

The stage had been set by a series of events that contributed both to a sense of urgency about environmental challenges and the feeling that this was a moment in which decisive, even transformative, action was possible. In 1968 we were able to see the Earth from space for the first time, and many people around the world were moved by its lack of borders and apparent vulnerability. In 1972 in Stockholm the United Nations held its first conference on the environment, which led to the creation of the United Nations Environment Programme. The same year Nixon went to China, and the following year the Paris Accords were signed ending American involvement in Viet Nam. Détente with the Soviet Union was growing. In 1977, the Viet Nam era American Secretary of Defense and now World Bank President, Robert McNamara, announced the creation of a commission that would make recommendations regarding North-South relations. The resulting Brandt Commission, issued reports in 1980 and 1983 with proposals focusing on food and agricultural development, aid, energy, trade, international monetary and financial reform, and also discussing the global environment, the arms race, and population growth. In 1983 the United Nations General Assembly created the World Commission on Environment and Development, which published its report in 1987, popularizing the phrase "sustainable development." The resulting book, *Our Common Future*, sold millions of copies worldwide.

In Europe especially, environmental consciousness was growing rapidly, partly in response to concerns about acid rain and fears generated by the 1986 Chernobyl nuclear disaster.¹⁵ Green political parties were forming all over, and since most European countries have some system of proportional representation, these parties were gaining parliamentary seats. The European Union was becoming progressively

¹⁴ <http://www.un.org/documents/ga/res/43/a43r053.htm>. For the origins of the IPCC, see Shardul Agrawala, "CONTEXT AND EARLY ORIGINS OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE," *Climatic Change* 39: 605–620, 1998; and Bolin.

¹⁵ http://fas-polisci.rutgers.edu/dkelemen/DOCS/Kelemen_Vogel_TradingPlaces_CPS.pdf

stronger and acting increasingly independently of individual states, and the Greens made their influence felt here as well. They entered the European Parliament in 1984 and have been continuously represented since then. Greens were also becoming increasingly influential in Eastern Europe and the Soviet Union through the emerging social movements that were challenging the power of the state and the Communist Party. Gorbachev's rise to power in the Soviet Union in 1985 seemed to create new political possibilities for addressing global environmental problems. In his bold and wide-ranging speech to the United Nations in 1988, Gorbachev indicated that the reformed Soviet Union would play an aggressive role in protecting the global environment.¹⁶ It seemed that there was a real possibility that the East and West would join in trying to heal the North/South division, and address the linked problems of global environmental destruction, poverty, and underdevelopment.

In 1987 the Montreal Protocol was signed, the first in a series of international agreements leading to the phase out of ozone-depleting chemicals. While the possibility that human action could deplete stratospheric ozone had been discussed and debated since the early 1970s, the 1985 discovery of the Antarctic ozone hole, which no model had predicted, shocked people around the world.¹⁷ This discovery showed how subtle changes in the atmosphere can produce surprising, unintended consequences that can threaten the prospects for life on earth. The next year UNEP and the World Meteorological Organization (WMO) joined to produce an international scientific assessment of the threat posed by CFCs and other compounds, while expeditions led by Susan Solomon showed that CFCs were indeed implicated in causing the Antarctic ozone hole. The adoption of the Montreal Protocol, which embodied a system of targets and timetables, was a great achievement that occurred very quickly by the standards of international diplomacy. This led to a sense of optimism that with the help of the scientific community, the nations of the world could successfully address the problem of climate change.

1988 was the year in which climate change moved from an issue of public concern to a global project. Much of the United States spent the summer in the grip of extreme heat and serious drought. Fires raged in Yellowstone National Park, agricultural production declined dramatically, and water levels in the Mississippi River system dropped precariously, resulting in channel closings and ship groundings. On the Eastern seaboard demand for electricity to run fans and air conditioners hit an all-time high, and air conditioners were even in short supply. On June 23rd, 1988, a sweltering day in Washington, DC, climate modeler James Hansen testified before a U.S. Senate Committee that it was 99% probable that global warming had begun. Hansen's testimony was front-page news in the *New York Times*, and was extensively covered in other media as well. One week after Hansen's testimony, a WMO-sponsored conference

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http://www.writespirit.net/inspirational_talks/mikhail_gorbachev_talks/united_nations_address/

¹⁷ SST controversy, then Molina & Rowland, *Nature* 1974

in Toronto called for a 20% reduction in greenhouse gas emissions by 2005. On July 28th Senator Tim Wirth of Colorado, along with 17 co-sponsors from both political parties, introduced the *National Energy Policy Act of 1988* calling for a 20% reduction in US carbon dioxide emissions from 1988 levels by the year 2000. In a September speech to the Royal Society, British Prime Minister Margaret Thatcher expressed concern about climate change, ozone depletion, and acid rain, noting that the five warmest years in a century were all been in the 1980s, and reminding her audience of the vulnerability of the Maldives to sea level rise.¹⁸ In the United States, 1988 was an election year and the Democratic Party promised in its platform to “address... the ‘greenhouse effect.’”¹⁹ George Herbert Walker Bush, the Republican candidate, promised to counter the greenhouse effect with “the White House Effect,” and declared that he would be the “environmental president.” What seemed like a bidding war over emissions reductions continued in November in Hamburg, Germany, when the World Congress on Climate and Development called for a 30% reduction in emissions by 2000. The year ended with *Time Magazine* forgoing its usual “man of the year” in favor of the “Endangered Earth” as “planet of the year,” depicting the planet as wrapped in plastic and bound in rope.

Resolution 43/53 left the IPCC only about 18 months to produce its first report. Initially its work was supported, and cheered on by virtually every country in the world. In January 1989, newly appointed US Secretary of State, James Baker, spoke at the first meeting of Working Group III, declaring that the time had come for political action.²⁰ In February, 1990, President George Herbert Walker Bush told the IPCC that “[t]he US is strongly committed to the IPCC process of international cooperation on climate change.”²¹ However, in August, 1990, at the IPCC meeting in Sundsvall, Sweden, which had been called to approve the texts of the three working group reports along with a synthesis statement, competing political interests and ideologies were on display. Greenpeace International was present, and so were climate change denial NGOs such as the Global Climate Coalition and the Global Climate Council, as well as various fossil fuel interest groups. Under pressure for revisions from the United States, Saudi Arabia, the Soviet Union and some developing countries, the meeting nearly collapsed.²² Finally, however, a text was accepted, and after one more round of ministerial review, it was submitted to the UN General Assembly in October, 1990.

In response, the General Assembly, created the Intergovernmental Negotiating Committee (INC) whose charge was to prepare a proposal for a framework convention on climate change that would be acted on at the UN Conference on Environment and Development that would meet in Rio de Janeiro in June 1992. Remarkably, with only

¹⁸ <http://www.margaretthatcher.org/speeches/displaydocument.asp?docid=107346>

¹⁹ <http://www.presidency.ucsb.edu/ws/index.php?pid=29609>

²⁰ Bolin, 53-54

²¹ Bolin, p. 58.

²² Gorbachev's grip on power was steadily weakening and by the end of 1991 the President of the Soviet Union was no longer a president, and there was no longer a Soviet Union of which one could be president.

eighteen months to act, the INC was able to agree on a text. The Framework Convention on Climate Change was opened for signature in Rio on May 9, 1992, and entered into force on March 21, 1994.

Despite the conflicts, the FCCC has won nearly universal acceptance (there are 194 parties to the convention while the UN has 192 member states). The parties to the FCCC committed themselves to the following:

The ultimate objective of this Convention ... is to achieve...stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.²³

They would achieve this objective by assuming “common but differentiated responsibilities.” The developed countries would lead the way by reducing their own emissions and transferring technology and financial assistance to developing countries. Instead of the mandatory targets and timetables favored by the European Union, AOSIS, and most developing countries, but opposed by the United States and the oil-producing states, the FCCC incorporated highly ambiguous language regarding responsibilities of developed countries to reduce their emissions. In Article 4.2.a of the Convention, each developed country committed itself to

... adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions ... recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases ... would contribute to such modification...

In 4.2.c this commitment is referred to as developed countries having “the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases.” The ambiguity of the language is indicated by the fact that shortly after the United States signed the convention in Rio, a Bush policy advisor wrote to a US congressman that “there is nothing in any of the language which constitutes a commitment to any specific level of emissions at any time,” while the chief British negotiator was quoted about the same provision as saying that it is “indistinguishable” from an absolute guarantee.²⁴

²³ The full text of the convention is available at http://unfccc.int/essential_background/convention/background/items/1353.php

²⁴ Daniel Bodansky, *The U.N. Framework Convention on Climate Change: A Commentary*, 18 Yale J. Int'l L. 451, available at http://www.heinonline.org/HOL/Page?handle=hein.journals/yjil18&id=459&size=2&collection=journals&set_as_cursor=3 (1993), pp. 516-7.

The FCCC is a framework convention. What mattered was the way forward, and from the beginning there were two distinct visions about how it ought to go. The Europeans and environmentalists were willing to accept the FCCC because they saw this as the first step in a process in which the parties would take mutually reinforcing positive actions. Developed countries, which were responsible for 75% of CO₂ emissions from 1860-1990 despite having only 20% of the world population, would demonstrate the seriousness of their commitment by voluntarily stabilizing their emissions at 1990 levels by 2000. They would also transfer technology and other resources in order to enable developing countries to produce greenhouse gas inventories, take climate change into account in their planning processes, educate their citizens about climate change, and promote sustainable management. These initial steps would begin to bend the curve on CO₂ emissions and build confidence among the parties. During the next period all countries would share the burdens of emissions reductions according to the principle of “common but differentiated responsibilities.”

The problem with this approach is that it assumed good will and a common purpose on all sides. However, not everyone wanted global action on climate change. Most of the oil producing states were opposed, and so were many influential actors in the United States who were motivated by ideology, self-interest, or the calculus of political advantage. The policies of some nations were unstable (e.g., Canada, Australia), while other important actors were not committed to either scenario, but were poised to follow a pragmatic or opportunistic policy. The logic of the optimistic scenario was such that it was extremely vulnerable to those who were opposed to taking action. If the naysayers could prevent developed countries from acting in a way that inspired confidence and trust on the part of developing countries (for example by casting doubt on the fairness of the bargain or the willingness of developing countries ever to do their part), then they would be able to prevent the virtuous circle of mutually reinforcing positive actions from ever taking hold. Even if the transition to a carbon-free economy could not be prevented but only delayed, this would still result in enormous economic benefits for some of the interest groups involved.²⁵

In January 2009 a new American administration took office. It was committed both to engaging constructively in the international negotiations to establish a post-Kyoto climate regime, and to reducing emissions domestically through various policy interventions including the establishment of a cap and trade system. However, the lesson that it took from the Clinton administration’s failure with the Kyoto Protocol was the importance of linking international and domestic policy. The Obama administration

²⁵ The delaying game is often self-consciously played by actors with large economic interests at state (e.g., automakers opposing seat belts, phase out of leaded gasoline etc. See my bioethics paper.) Political actors often benefit from opposing a policy or regulation, then becoming its champion once it is enacted (e.g., Republicans have tried this tactic with social security). And of course some developing countries (e.g., India) have been relieved that the lack of action by developed countries which relaxes the pressure on them to act.

was not going to make international commitments that it could not ratify or achieve at home.

The American administration went to Copenhagen in December, 2009, with several disadvantages. First, the Americans had done little to convince the rest of the world that it was serious besides electing a new president who spoke a different language about climate change. Second, there was little time for the new administration to engage meaningfully with the international process prior to Copenhagen. Third, the negotiations that did occur appear to have been badly managed.

Moreover, the climate change denial campaign escalated once again. Less than three weeks before the Copenhagen meeting opened, emails were hacked from the Climate Research Unit at the University of East Anglia in the UK and posted on a climate change denial website. The New York Times quoted prominent climate change deniers, including Patrick Michaels, who said, "this is not a smoking gun; this is a mushroom cloud."²⁶ The story was picked up by all the major media, and was quickly dubbed "climategate." Prominent climate scientists were charged with fabricating research results, misrepresenting data, and trying to destroy the careers of scientists who disagreed with them. Death threats spiked against climate scientists. Even some advocates for aggressive action on climate change announced their disappointment, and endorsed some of the charges that were being made.²⁷ Finally, months later after nine separate investigations, the scientists were exonerated. No one who was involved in stealing the emails, making them public, or threatening the scientists has been brought to justice. Some in the media acknowledged that this has been a "highly orchestrated, manufactured scandal," but the damage had already been done.²⁸ Climategate was not the bullet that killed Copenhagen, but it was one of the thousand cuts.²⁹

The divisions that have haunted climate change negotiations from the beginning hardened and fractured even further in Copenhagen. The United States was at odds with the EU and the North was in conflict with the South. AOSIS led by Tuvalu demanded rigorous, legally binding commitments that almost no one was willing to accept. Rifts occurred between large developing countries such as China and Brazil and others in the G-77. Countries such as Venezuela, Nicaragua, and Bolivia became

²⁶ <http://www.nytimes.com/2009/11/21/science/earth/21climate.html>

²⁷ <http://www.guardian.co.uk/environment/georgemonbiot/2009/nov/25/monbiot-climate-leak-crisis-response>

²⁸ <http://www.newsweek.com/blogs/the-gaggle/2010/06/25/newspapers-retract-climategate-claims-but-damage-still-done.html>. See also

http://www.cjr.org/the_observatory/wanted_climate_frontpager.php

²⁹ http://environment.yale.edu/climate/publications/climategate-public-opinion-and-the-loss-of-trust/?utm_source=effects+of+climategate&utm_medium=email&utm_campaign=effects+of+climate+gate. For a full account see The Climate Files, Fred Pearce London: Guardian Books.

increasingly rejectionist. The two negotiating tracks were never successfully brought together, with many developing countries demanding that any agreement reached had to be within the purview of the Kyoto Protocol, a condition that could not be satisfied by the US. New disputes broke out how to about how to verify national claims about emission reductions, and about the transparency and inclusiveness of the negotiating process.

President Obama remained non-committal about whether he would go to Copenhagen until November 25th, when the White House issued a statement confirming his attendance and stating the US position. The United States would reduce emissions 17% by 2020 from a 2005 baseline, and also affirm as “goals” and “provisional targets” reductions of 30% by 2025, 42% by 2030, and 83% by 2050.³⁰

The President arrived on the morning of the final day of the conference, going immediately into negotiations with a select group of world leaders, and then emerging for a plenary address. His speech seemed mainly addressed to Americans rather than to the conference delegates who remained skeptical of American good faith. Obama began by acknowledging American responsibility, but in a way that seemed grudgingly tautological: “As the world's largest economy and the world's second largest emitter, America bears our share of responsibility in addressing climate change.” He went on to boast of a record that many find altogether lacking if not downright pathetic, mentioning “our leadership within international climate negotiations,” and claiming that “bold action” had been taken at home. All this, he said, was “ambitious,” and he went on to restate the commitment to the emissions reductions that had been made in the White House statement.³¹ The speech was not well received. A 17% emissions reduction by 2020 from a 2005 baseline is equivalent to a 4% reduction from the 1990 baseline, by far the weakest offer of any developed country (except for Canada which offered a 3% reduction). By contrast, the EU was offering a 20-30% reduction.

After his speech Obama went back to negotiations and shortly before midnight, the Copenhagen Accord was unveiled. Draft texts of hundreds of pages negotiated over two years were replaced with a new declaration of two and a half pages that went through several drafts, each thinner and vaguer than the one before. References to emission cuts in developed countries of 50 percent by 2050 and 80 percent were dropped, reportedly at the insistence of China.³² The final text was an agreement negotiated behind closed doors by the US, China, Brazil, South Africa, and India, and supported by about twenty other countries including Ethiopia and the European Union.

³⁰ <http://www.whitehouse.gov/the-press-office/president-attend-copenhagen-climate-talksuntil>

³¹ http://www.huffingtonpost.com/2009/12/18/obama-in-copenhagen-speech_n_396836.html

³² <http://www.guardian.co.uk/environment/2009/dec/22/copenhagen-climate-change-mark-lynas>. For more on the process see Inside Copenhagen: The State of Climate Governance Radoslav S. Dimitrov Global Environmental Politics 10:2, May 2010

After the press conference announcing the Accord, Obama flew back to the United States, while the Accord received a tumultuous reception from angry delegates. Rather than adopting or rejecting the Accord, the Convention finally agreed to “take note” of it. The Accord was denounced by most environmental organizations, except for those based in the United States. The executive director of Greenpeace UK declared that “the city of Copenhagen is a crime scene tonight, with the guilty men and women fleeing to the airport.”³³

The plain fact is that after twenty years of climate diplomacy, the main forces that have successfully dampened greenhouse gas emissions have been, in order of increasing importance: global recession, the collapse of communism, and China’s one child policy.

3. International Paretianism (IP)

Some American international relations scholars saw the Rio approach as misguided from the beginning.³⁴ Even before the signing of the Kyoto Protocol they objected to the very idea of a comprehensive, global treaty with binding national target.³⁵ To some extent, their predictions of failure were (self) fulfilled. What the dream had going for it was founded on the idea of mutual respect among nations, and it is difficult to think of the climate change regime as existing in an ethics free zone when, for example, Lumumba Stanislaus-Kaw Di-Aping, the chief negotiator for the G-77, compares the Copenhagen Accord to the holocaust.³⁶

Posner and Weisbach introduce IP as “a rough attempt to solve the tension between realism and idealism.” Here is their original statement of IP.

All states must believe themselves to be better off by their lights as a result of a climate treaty.³⁷

Putting aside the question of what it is for states to have propositional attitudes such as beliefs, it is clear that this is a weak, subjective principle, at least as it is stated here. For PI to be satisfied, a climate treaty does not have to actually make states better off by their own lights, nor do they even have to be generally perceived to be better off by their own lights. States could be wrong about thinking that a climate treaty makes them better off and IP would still be satisfied. Moreover, in this formulation, IP does not restrict what states may regard as making themselves better off. A state could have an eccentric or weird idea of what makes it better off (e.g., a large military, large numbers of hedge fund managers, or a vast number of religious scholars). Or a state could be

³³ <http://news.bbc.co.uk/2/hi/science/nature/8421910.stm>. For a humorous, but just as chilling account, visit http://www.youtube.com/watch?v=3_RIKxz_ymQ

³⁴ E.g., David Victor, whose 2001 book, *The Collapse of the Kyoto Protocol*, was devoted to an event that never actually occurred.

³⁵ Thomas Schelling had advocated “pledge and review,” the basic concept embodied in the Copenhagen Accord, since the 1980s.

³⁶ As he did in Copenhagen. See xxxx

³⁷ P. 6.

highly moralistic, believing that its own welfare is a function of everyone's welfare. For example, a state might actually believe what John F. Kennedy said at the Berlin Wall in June, 1963, that "Freedom is indivisible, and when one man is enslaved, all are not free."³⁸ IP would be satisfied so long as states believed that a climate treaty would produce favorable results for them, whatever these favorable results might consist in. In this formulation IP is so weak that it comes close to saying nothing more than that if there is to be a climate treaty, then states must desire what they take to be the results of such a treaty.

However, Posner and Weisbach are not consistent in their interpretation of IP. In other passages they seem to take IP to be an objective principle about economic welfare. In another passage they talk about a climate treaty "redistributing wealth," and claim that "a climate treaty that produces net costs...violates the principle of International Paretianism."³⁹ But it does not follow from the original formulation of IP that a treaty that produces net economic costs violates IP. If nations construct their interests in some other terms than wealth (e.g., the triumphal march of democracy, capitalism, socialism, or whatever), then IP may be satisfied even if it produces net economic costs. Indeed, Posner and Weisbach go on to say that behaving altruistically can be part of a nation's interest, and so an agreement with some degree of altruism can in principle satisfy IP.⁴⁰ In practice, however, they think that IP "probably requires that all states that participate in a climate treaty are economically better off."⁴¹

Posner and Weisbach think that IP is a "pragmatic starting point for negotiations," but it is difficult to see why.⁴² A weak reading of PI does not significantly restrict the domain of possible climate treaties. A strong reading of PI in which welfare is conceived as objective economic welfare, would be empirically false. Nations often seem to take actions that are against their economic interests. They fight wars against drugs and terrorism, and in favor of human rights or democracy in remote parts of the world. Of course it can be said that there are subtle arguments that show that such actions are in the economic interests of a state; that in supposing otherwise, we are not correctly pricing the economic importance of intimidating demonstrations of state power, deterrence, or whatever. Consider a small example. Over the past 34 years the state of California has spent \$4 billion executing 13 prisoners for capital crimes.⁴³ Even in this case it can be said that the executions pass some benefit-cost test (what a grisly thought!). At some point, however, it begins to be clear that such claims are vacuous. States can act contrary to their interests, perhaps even by signing up to a climate treaty (isn't that what some of the critics thought the US did in Kyoto?). To suppose otherwise

³⁸ <http://www.historyplace.com/speeches/jfk-berliner.htm>

³⁹ p. 93

⁴⁰ pp. 177-8.

⁴¹ P.181

⁴² P. 179.

⁴³ <http://www.nytimes.com/2012/04/13/opinion/more-evidence-against-the-death-penalty.html>

is to treat IP as an axiom rather than as an empirical claim open to falsification, and it is difficult to see how such an axiom can function as a “pragmatic guide.”

What Posner and Weisbach want to show is that proposed climate treaties that are extremely redistributive are not feasible. But the real work here is being done, not by PI, but by Posner’s and Weisbach’s empirical beliefs about the economics of various possible climate treaties, what different countries believe about the economics, and how economic considerations would be traded off against other values in various countries. All of this is very dark, and Posner and Weisbach mobilize little empirical support on behalf of their views. There is serious disagreement about the economics of climate change, and in part this turns on various normative beliefs (e.g., about pure time preference) and certain empirical assumptions for which there is very little evidence (e.g., the growth rate over the next few centuries). Moreover, nations have different attitudes towards the importance of economic considerations and how to trade them off against other values when they seem to conflict. No doubt there are practical limits on how economically redistributive a treaty can be and gain universal acceptance, but PI in its various formulations does little to illuminate them.

4. Welfarism

Posner and Weisbach are motivated by a general philosophical outlook that they call “welfarist,” which they introduce by contrasting with deontology.

Deontological approaches focus on the rightness of particular acts independent of their consequences...while [t]he welfarist approach approves of acts that increase the welfare of relevant people (and perhaps animals).⁴⁴

They go on to say that welfare can consist in a “subjective sense of well-being, satisfaction of desires or preferences, or satisfaction of certain objective parameters.”⁴⁵

What Posner and Weisbach mean by ‘welfarism’ is some hybrid between consequentialism (a deontic theory) and a theory of value that is often called ‘welfarism’.⁴⁶ The passage quoted above is confusing because it embodies a false contrast between views about what makes acts right (the proper contrast here is between non-consequentialist views such as deontology and consequentialism), and views about the nature of value (the contrast here is between taking increases of

⁴⁴ p.8. Unfortunately, as Simon Keller notes, “[i]n the philosophical literature, direct discussion of welfarism is rare, and those who do discuss it offer differing stories about what welfarism is, exactly, and about which views in moral philosophy are consistent with it.” (Simon Keller, “Welfarism,” *Philosophy Compass* 4/1 (2009): 82–95, at p. 83; available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-9991.2008.00196.x/abstract>)

⁴⁵ P.171. Posner and Weisbach may have been led astray by the article in the Stanford Encyclopedia of Philosophy on well-being which also blurs this distinction.

⁴⁶ What I call theories in the text are more properly thought of as families of theories.

welfare as morally valuable and the rejection of this claim).⁴⁷ Since consequentialism is consistent with a broad range of theories of value and since part of what Posner and Weisbach mean by ‘welfarism’ is consequentialism, it is not surprising that their understanding of well-being is quite broad. However, there are limits on what theories of value can reasonably be called welfarist. For example, Hasting Rashdall, one of the ideal Utilitarians who flourished in the first half of the twentieth century, held that virtue and knowledge are among the goods that we ought to promote.⁴⁸ However, there is no guarantee that bringing about such goods will contribute to welfare in any reasonable sense of the term. Promoting knowledge and virtue may result in misery and early death rather than well-being. Rather than thinking of philosophers such as Rashdall as welfarists, it is more reasonable to think of them as non-welfarist consequentialists.⁴⁹

Consequentialism is consistent with a broad range of deontic principles including both maximizing and satisficing principles.⁵⁰ Posner and Weisbach seem to endorse this claim when they write that “many different forms of aggregation are consistent with welfarism” and state that utilitarianism is only one such version.⁵¹ Yet in the text they say that “[w]elfarists seek policies that maximize people’s well-being,” thus effectively identifying welfarism with utilitarianism.⁵²

While pointing out these inconsistencies may seem like philosophical nit-picking (which is worth doing for its own sake anyway), some of Posner’s and Weisbach’s conclusions regarding climate justice rely on specific views in ethical theory that are obscured by their use of the term ‘welfarism’. It is not a general commitment to welfarism or consequentialism that leads Posner and Weisbach to minimize the roles of distributive justice, corrective justice, and equality in climate justice, but rather their commitment to a crude version of utilitarianism that reduces value to money. While they do not explicitly endorse such a view or even consistently presuppose it, it is difficult to make sense of some of their arguments without attributing some such view to them.⁵³

⁴⁷ Consequentialism is the view that acts are right, wrong, or indifferent solely in virtue of their consequences. For further discussions see my *Ethics and the Environment* (Cambridge UP, 2008), ch. 4.

⁴⁸ For discussion, see Anthony Skelton, “Ideal Utilitarianism: Rashdall and Moore,” in Thomas Hurka, ed., *Underivative Duty*, OUP, 2011.

⁴⁹ This is also how Keller regards them. While it is more difficult to think of non-consequentialists who have been welfarists, Keller suggests that versions of welfarist deontology and virtue theory may count as such.

⁵⁰ See Jamieson and Elliott, “Progressive Consequentialism,” *Philosophical Perspectives*, 2009, for discussion.

⁵¹ P. 217, note 7

⁵² p. 171.

⁵³ However, many of their claims are widely shared and do not presuppose such a commitment. For example, many climate ethicists (myself included) agree that a climate treaty should not be a vehicle for the general redistribution of wealth according to some broad principle of distributive justice. There is

The role that is played by Posner's and Weisbach's utilitarianism can be seen in their treatment of proposals to create an international system of emissions trading, based on an initial equal per capita allocation of permits among countries.⁵⁴ Both Peter Singer and myself have advocated such a system, but neither of us have felt any tension between these views and broadly consequentialist (and welfarist in the narrow sense) convictions.⁵⁵

Posner and Weisbach consider two bases for the view that emissions permissions should be allocated on an equal per capita basis: one founded on welfarism, and another founded on fairness.

Posner and Weisbach assume that a welfarist argument for an equal per capita allocation must rest on two factors: distribution and efficiency. While they are not completely clear about why a welfarist would argue on the basis of distribution, it appears that the reason concerns diminishing marginal utility. Generally, a unit of a resource produces more utility when allocated to someone who has less of the resource than to someone who has more.⁵⁶ Posner and Weisbach point out that a system of equal per capita allocation at best "is only indirectly connected to the underlying normative goal [increasing global welfare]...and that it would be much better to redistribute all resources than to redistribute shares of the atmosphere's capacity to absorb greenhouse gases."⁵⁷ They go on to claim that equal per capita allocations would be inefficient because "[g]overnments would be rewarded for pursuing fertility policies that maximize the size of the population..." and that such a system

punishes states that do well, while rewarding states that do poorly...From an efficiency perspective, the best use of the surplus [generated by any climate treaty that satisfies IP] would be to reward the states that had taken steps in advance of the treaty to abate the greenhouse gases."⁵⁸

also a substantial literature pointing out that there are difficulties in applying standard principles of corrective justice to actions that may cause climate change (e.g., Jamieson 2007, Kyser). Finally, reconciling cosmopolitan concerns with the existing state system is a major challenge for all political theorists

⁵⁴ The problem of how to allocate future greenhouse gas emissions was once perhaps the most salient question in climate ethics but its importance has receded as it has becoming increasingly likely that tolerable emissions limits will be breached before any such system can be put in place. Other issues of climate ethics regarding adaptation and compensation are now of more immediate concern.

⁵⁵ "Climate Change and Global Environmental Justice," P. Edwards and C. Miller (eds.), *Changing the Atmosphere: Expert Knowledge and Global Environmental Governance* (Cambridge: The MIT Press, 2001): 287-307; Peter Singer, reprinted in *Climate Ethics*.

⁵⁶ There are lots of counter-examples here, including our old-friend "the utility monster," bequeathed to us by Robert Nozick in *Anarchy, State and Utopia*, 1974.

⁵⁷ P. 129

⁵⁸ p. 133.

While “there are complexities here,...[t]hese states would probably be the European states that accepted binding reductions under the Kyoto protocol.”⁵⁹

While these arguments have some force, quite a lot can be said in response to them, though I can’t do full justice to the details here. First, in my 2001 presentation of the equal per capita allocation proposal, I anticipated the objection regarding perverse incentives for fertility rates and suggested that the per capita allocation be indexed to a particular year. Singer took up this suggestion in his later presentation. While there have been objections to such indexing as a solution, the problem has not been ignored. Second, while it is important from an efficiency perspective to consider the incentive effects of various institutional arrangements, it is far from clear that the most efficiency-conducive allocation of a climate treaty surplus would be to reward those who have acted well in the past. It is an entirely open, empirical question as to whether allocating resources in this way would do the most to incentivize efficiency-producing behavior in the future.

The most important point is keyed by Posner’s and Weisbach’s observation that a system of equal per capita allocation at best “is only indirectly connected to the underlying normative goal.” This is true, and this thought has been central to utilitarian thinking since at least Bentham. It has spawned many versions of indirect consequentialism including rule consequentialism, virtue consequentialism, global consequentialism, and so on. Utilitarianism is highly context-sensitive, and the level at which its guiding principle should be applied is always a question worth asking. As I have said elsewhere, utilitarianism is a universal emulator: it implies that people should lie, cheat, steal, even appropriate Aristotle, when that is what brings about the best outcomes. Only a quite reductive utilitarian view would consider it an objection to a policy that it is indirectly connected to the underlying normative goal.⁶⁰

For these reasons (and others), it is important not to exaggerate the practical and middle-level differences between consequentialism and other moral theories. Consequentialists can appeal to such notions of fairness as part of the good (a view I haven’t discussed); and insofar as these notions are important to people and motivate their behavior it would be a mistake for consequentialists to ignore them. What consequentialists cannot say is that such notions figure at the very foundations of morality. This is where the clash of moral theories really occurs.

In light of these considerations, it is not surprising that Singer and myself both appeal to fairness as well as utility in arguing for an equal per capita allocation. We do not see ourselves as having to choose between these considerations. We can care about fairness because we care about welfare.

⁵⁹ P. 133

⁶⁰ For more on the themes of this paragraph see my “When Utilitarians Should be Virtue Theorists,” reprinted in *Climate Ethics*.

However, Posner and Weisbach do not think that arguments from fairness work any better than welfarist arguments in supporting equal per capita allocations. To a great extent the difference between us turns on what we think fairness implies with respect to the atmosphere. Most climate ethicists think that people have equal rights to use the atmosphere as a sink for greenhouse gases, and that the extent of these rights is determined in part by some threshold, such that the consequences would be pretty universally unacceptable if it were exceeded. They believe this because they can find no morally relevant reason for supposing that some people have rights to use the atmosphere that others do not. However exactly this view is filled in, it leads naturally to the conclusion that those currently alive in rich, industrial countries are exploiting the atmosphere beyond their rights. Posner and Weisbach disagree with this conception of atmospheric rights. They think that current emitters who receive fewer entitlements to emit under equal per capita allocation “should be compensated for the lost investment that they made in the reasonable expectation that their rights would continue as in the past.”⁶¹ The only principled argument that would seem to lead to this conclusion is one that holds that the present allocation is economically efficient, at least relative to the alternatives under consideration, and that this consideration has sufficient moral force to trump other considerations. The only moral theorists I know who would endorse such a view are a certain kind of utilitarian with a quite reductive theory of value. They are found more commonly in economics departments than philosophy departments.⁶²

5. Living With Climate Change

Posner and Weisbach see the fundamental challenge of climate policy as achieving an optimal climate treaty and deciding how to allocate the surplus.⁶³ Some international relations theorists see the challenge in similar but less economic terms, as one of producing the benefits of international cooperation while respecting national interests.⁶⁴ I see the challenge as one of slowing or reducing the build-up of greenhouse gas concentrations in the atmosphere; adapting to climate change in a world characterized by radical inequality, mutual suspicion, and diverse values; with an awareness that there is some chance that increasing GHG concentrations in the atmosphere could be catastrophic; and all this while protecting what we value, which includes features of non-human nature as well as economic welfare.

There is not general or abstract solution to this challenge. Its exact nature is path-dependent. Climate economics, for example, is extremely policy-sensitive. Innovations that internalize externalities or create cooperative arrangements among

⁶¹ P. 136

⁶² Luc Bovens has defended a limited form of “grandfathering” on somewhat different grounds. There is more to say about this dispute, including the relevance (or not) of various analogies from morality and law regarding rights to indoor air, minerals from the sea, and so on. I cannot pursue this discussion here.

⁶³ cite P & W

⁶⁴ cite Victor

countries and other actors can contribute to economic welfare, which ramifies into the future. If key nations had behaved in the way envisioned by the Rio Dream would these nations or the world be better or worse off than they are today? This is a good question that I don't know how to answer. It is made even more difficult by the considerations adduced earlier about the value-ladenness of economic calculations and the difficulty of valuing non-market impacts of climate change that will unfold over centuries. Some would say that whatever the truth about climate economics, the Rio dream was bound to fail because key nations were bound to defect. But how do we know this? Could anything else have worked? Perhaps this story simply transforms the political success of some interest groups (e.g., the US Chamber of Commerce, Exxon) into necessary truths about international relations. I think the Rio Dream could have succeeded but I have no way of proving it. Our world would be quite different if the Clinton administration had acted to reduce US emissions rather than sitting on its hands after its failure to enact a BTU tax. Perhaps in order to do this the Clinton administration would have had to succeed on health care reform and then used its accrued political capital on climate change. Or perhaps it would have been enough had Clinton not had to admit to an "improper physical relationship" with an intern after denying that he had "sexual relations with that woman." In any case the world is where it is and it matters how it got here; and the bruises that it wears as a result matter too. History is important.

As I have said, the dream of the 1992 Rio Earth Summit came to an end in Copenhagen in 2009.⁶⁵ That the dream is over does not mean that everyone is awake. The United Nations will continue to hold successful meetings since UN meetings never fail. Diplomats will continue to dipolomitize, talking heads will keep talking, and all of this will seem Very Important to Very Important people. However, all of this to-ing and fro-ing will be in the service of a zombie negotiation. While bodies and mouths continue to move, it is increasingly obvious that the action is elsewhere. The international climate negotiations are increasingly part of a broader effort at global regulation involving trade, immigration, human rights, currency and capital flows, and other issues. Efforts to control the forces that give rise to these problems will continue. Someday, perhaps, these efforts will result in an international regime that is responsive to the anthropogenic destabilization of the climate system. But don't hold your breath.

In the interim, climate politics and policy will continue to be practiced. There will be decisions and perhaps even agreements, some of which may actually be kept. But rather than based on a global deal, climate policy for the foreseeable future will largely reflect the motley collection of policies and practices adopted by particular countries. Climate policy in the next few years is likely to be driven by national and regional efforts rather than by large schemes and big dreams about global cooperation. In every country there are political divisions about how to respond to climate change, and domestic politics will become even more important in determining the global response.

⁶⁵ Sadly, I more or less predicted this in "The Post-Kyoto Climate: A Gloomy Forecast," *Georgetown Journal of International Environmental Law* 20 (2008): 537-551 (2008).

This will all seem rather drunk and disorderly. What countries do (and fail to do) will reflect their internal politics, values, fears, ambitions, and national priorities. There will be climate relevant action, but it will be different in different countries, and it will be pursued under different descriptions and with different objectives. Some countries will adopt emissions trading, others carbon taxes, and others technology forcing policies. Some countries will alter their energy mix, others their transportation systems, and others will focus on buildings. Some countries will do a lot and others will do a little. Urban sustainability will become increasingly important everywhere. In some countries there will be a great deal of subnational variation, while other countries will have nationalized and even to some extent internationalized their policies. These policies, in different proportions depending on the country, will reflect a mix of self-interest and ethical ideals. These notions of self-interest and ethical ideals will be constructed in different ways in different countries. Any international agreement will be a matter of an overlapping consensus.

While the global environmental movement has not succeeded in motivating the countries of the world to adopt an effective global climate regime, it has succeeded in insinuating itself into the political fabric of virtually every country, even those such as the United States which are the most recalcitrant on climate change. In the sober light of these new realities old stereotypes about northern environmentalism in conflict with southern development priorities should be discarded or refigured. In elections held in 2010, the Green Party candidate for President of Brazil drew nearly 20% of the vote while the Green Party in Great Britain captured only about 1% of the vote. Of course, many subtle things can be said to show that these numbers do not really mean what they seem to mean. Nevertheless, it is clear that seismic changes are underway in the configuration of global environmentalism. The site of the global struggle to stabilize climate is now primarily within countries rather than among them.

US policy in the next several years will be driven by the effectiveness and resiliency of laws, policies and institutions such as RGGI, California's climate change laws and policies, attempts to regulate carbon dioxide under the Clean Air Act, and the vast amount of litigation slowly working its way through the courts.⁶⁶ There have been attempts in recent years to reframe climate change as an issue about energy, green jobs, or concern for our children.⁶⁷ None of these thus far has gained much traction. A narrative may come along in the future that will move people and organize our thoughts and feelings about climate change in a way that will be effective. Perhaps it is geoengineering that will catch the popular imaginatin. In the meantime we live in the wreckage of the old story.

⁶⁶ You can track these developments at <http://www.law.columbia.edu/centers/climatechange>

⁶⁷ Hoffert, Breakthrough Institute, and Mary Wood respectively. In the 1980s Schelling wanted to frame the climate issue as a war on carbon financed by the rich countries, in which everyone is engaged against a common enemy. Generally on framing see Hulme.

So we will have to live with climate change. We will have to find meaning and joy in a world that increasingly fails to resemble the one in which we came to consciousness. The biota will change, diversity will diminish, weather will be less stable, skies will be different, and it will become increasingly difficult to relate to the old stories and tales. We will have to live in the knowledge that this is not like “an asteroid from space,” but the result of patterns of human action in which we persist. For some, this will mean grief and guilt. For others, it will mean suffering. For still others, it will be just another day at the office. This will be life in the anthropocene. When it comes to climate change, we are now in the era of climate politics. Climate change will trouble us, but there is no magic bullet solution. John Wayne is dead, and there is no Colt 45 peacemaker in sight.